COURT'S ORDER WHETHER THE CASE IS OR IS NOT

APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2) (b)]
Description of the case

Civil Writ Petition No. 1901 of 2001 (S/S) Decided on: 12th July, 2005

Civil Writ Petition No. 1901 of 2001 (S/S)
(Old Number 15419 of 1999)

Kewal Ram S/o Bishan Ram
R/o Village Chattgulla,
P.O. Chattgula, Dwara Hat,
District Almora. ……. Petitioner.

Versus

1. State of Uttar Pradesh
2. District Magistrate Almora
3. Senior Treasury Officer Almora
4. Joint Director Treasury,
   Kumaun Mandal, Nainital.
5. Commissioner Kumaun Mandal,
   Nainital. …….. Respondents.

A.F.R. (Approved for Reporting)
Not approved for Reporting

Dated 12.07.2005

(Hon'ble Mr. Justice Prafulla, C. Pant)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1901 of 2001 (S/S)
(Old Number 15419 of 1999)

Kewal Ram S/o Bishan Ram
R/o Village Chattgulla,
P.O. Chattgulla, Dwara Hat,
District Almora. ……. Petitioner.

Versus

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2. District Magistrate Almora
3. Senior Treasury Officer Almora
4. Joint Director Treasury,
   Kumaun Mandal, Nainital.
5. Commissioner Kumaun Mandal,
   Nainital.

…….. Respondents

Mr. G.S. Negi, leaned counsel for the petitioner.
Mr. N.P. Sah, leaned Standing Counsel for the State.

Hon'ble Prafulla, C. Pant J.

By means of this writ petition, moved under Article 226 of the Construction of India, the petitioner has sought writ in the nature of certiorari quashing the impugned order dated 16.03.1999, passed by the respondent No. 2, reverting the petitioner form Group- C post to Group –D post.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner was appointed in Group –D post in Sub Treasury Maulekhal (SALT), District Almora on 18.12.1990 in the pay scale of Rs. 750-940. On 18.08.1998, the petitioner was promoted from Group –D to Group – C on the post of clerk

in the pay scale of Rs. 3050-4590 under departmental promotion as per Government Order dated 31.08.1982 and 21.08.1993. The petitioner served the department in both of his capacities first on Group- D post and thereafter on Group –C post to full satisfaction to his seniors. However, petitioner was suddenly reverted from Group- C post to Group – D post vide order to dated 16.03.1993 passed by respondent No. 2, the District Magistrate Almora. The said letter was based on letters dated 08.01.1999 issued by the Joint Director Treasury, Kumaun Division, Nainital. (respondent No. 4) and another letter dated 08.01.1999 issued by the Commissioner, Kumaun Division Nainital it is alleged that the impugned order and the letter on which it was based are not only wrong and arbitrary but also against the law.

3) A counter affidavit has been filed on behalf of the respondents in which it has been stated that the promotion order issued on 18.08.1998 by the District Magistrate was not correct and against the rule. The promotion from Group- D to Group- C was only to the extent of 15% posts reserved for the departmental candidates. This mistake was brought to the notice of the District Magistrate through the letters dated 07.01.1999 issued by the Joint Director Treasury, Nainital and letter dated 08.12.1999 issued by the Commissioner, Kumaun Division, Nainital. As such accordingly to respondents, what has been achieved by the impugned order is the correction on the mistake committed

by the department, as such neither the impugned order is wrong not against the law.

4) This writ petition was filed in the year 1999 before the Allahabad High Court and received by way of transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000 for disposal.

5) I heard learned counsel for the parties and perused the record.

6) Before proceeding further, it is pertinent to mention here, the relevant rule regarding promotion from Group –D post to Group –C post 5(a) of U.P. Treasury Ministerial Service Rules, 1983, reads as under:

> ***"5. Source of recruitment.- Recruitment to the various categories of posts in the service shall be made from the following sources:***
> ***(a) Routine Grade Clerk. – (i) By direct recruitment. (ii) By promotion to the extent of 10 percent, form amongst Group 'D' employees in the Treasury of the concerned district(s).***
> ***(b) ……"***

I may mention here that the aforementioned 10 percent posts refer to the percentage of posts reserved in Group-C, for the promotion from Group- D to Group-C and that 10 percent has to be carved out from the existing post of Group- C. Incidentally, in the year 1995 the said quota has been increased to 15% and at present now it is 25%. What

the respondents have done is this that by mis-interpreting said rule they have taken the stand that 10% of the employees of the Group-D can only be promoted. This is not the spirit of the rule. The impugned order by which the petitioner has been reverted from Group –C post to Group – D post, reads as under:-

आदेश

"सयुक्त निदेषक, कोषागार, कुमांयू मण्डल, हल्द्वानी (नैनीताल) के पत्र संख्या 1791/क्षे0का0/ 34–ए/98–99 दि0 8–1–99 तथा आयुक्त, कुमायूं मण्डल, नैनीताल के पत्र संख्या 2111/क्षे0 का0/ 34–ए/98–99 दिनांक 8–2–99 के अनुपालन में श्री केवल राम आर्य एवं श्री धाम सिंह बघरी का पदोन्नति आदेष सं0 522/को0अधि0/ 98–99 दिनांक 18–8–99 एतद्द्वारा निरस्त किया जाता है तथा उन्हें उनके मूल पद चपरासी पर प्रत्यावर्तित किया जाता है ।"

जिला अधिकारी

अल्मोड़ा।

The letter mentioned in aforesaid impugned order are annexed with the counter affidavit, which are Annexure C.A. -1 and Annexure C.A. -2 to said affidavit. Both these letters indicate that respondent No. 4 has ims-interpreted the rule by giving a new meaning to the quota whereby, he has expressed that beyond the 10% (later 15%) of strength of employees in the Group –d cannot be promoted, and on the basis respondent NO. 5 has issued he consequential letter. Ultimately, in compliance of said order the impugned order appears to have been passed by the District Magistrate. There is not scope of mis-interpreting Rule 5(a)

and giving it a new meaning that the promotions cannot be made more than 10% (later 15%) of the existing posts of Group – D. The simple meaning of Rule 5(a) as quoted above is that 10% (later increased to 15%) posts in Group –C are required to be filled from amongst Group-D employees in the Treasury of concerned District(s) and remaining 90% (later reduced to 85%) posts in Group-C are required to be filled by direct recruitment. As such, this Court has no hesitation in holding that the letters dated 07/08.01.1999 issued by the Joint Director Treasury, Nainital is misconceived and no its basis letter dated 08.02.1999 issued by the Commissioner, Kumaun Division, Nainital and impugned order passed by the District Magistrate are wrong and against the law.

7) Accordingly, the writ petition deserves to be allowed. The writ petition is allowed. The impugned order dated 16.03.1999 passed by the District Magistrate, Almora is hereby quashed. The petitioner shall be entitled to the consequential benefits in Group-C post.

(Prafulla C. Pant, J.)

Dt: 12th July, 2005.
H.Negi